



JUDICIAL SYSTEM MONITORING PROGRAMME
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Incest Report



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The need to amend the Timor-Leste Penal Code





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EXECUTIVE SUMMARY

Women and children in Timor-Leste continue to face high rates of gender-based violence, including domestic and sexual violence. Court monitoring conducted by the Judicial System Monitoring Programme (JSMP) shows that gender-based violence cases against women and children comprise a substantial majority of the cases heard by the courts. Gender-based violence negatively affects the physical, mental and emotional health of women and children, as well as hinders the fulfilment of their human rights.

Incest is a particularly odious form of gender-based violence. Defined broadly by JSMP as sexual acts that take place between the offender and his or her child or parent, grandchild or grandparent, brother or sister, half brother or sister, niece or nephew; incest involves the exploitation of a position of familial authority by one family member against another. Prevalent in Timor-Leste, JSMP monitored 49 cases of incest from January 2012 until May 2018. However, due to victims being threatened by the perpetrator or their family as well as the possibility of their family and community ostracising or stigmatising them, many cases of incest go unreported.

In 2012 JSMP published a report on incest in Timor-Leste and the need for greater recognition of this crime. Several recommendations were made in that report which identified how the legislative framework and child protection structures could be strengthened so to generate stronger protection and prevention of incest. Following the publication of JSMP's 2012 report, an advocacy campaign was undertaken to raise public awareness of the seriousness of incest and the need for parties to take proper action through the courts. The campaign involved holding community legal education workshops and mobilising community action around criminalising incest. JSMP has also engaged with the National Parliament and Government to urge they prioritise the criminalisation of incest. Despite recognition by the National Parliament of the need to amend the Penal Code and include a subsection on the crime of incest, nothing has occurred. Though, JSMP commends the government for implementing an array of mechanisms to protect children victim of crimes, specifically incest victims. These include the creation of the Child Protection Unit, the National Commission for Children and a number of working groups who seek to protect and prevent child victims from violence.

This report provides an update as to what progress has been made in the last 6 years. Additionally, the ways in which victims of incest can be better protected at all stages of court proceedings and how to deter potential perpetrators of incest is included in this report. An analysis of areas of concern in pre-trial and trial proceedings, highlighted that many of the same concerns as in the 2012 report remain. Judges continue to infrequently consider and apply protective and coercive measures in cases of incest. Delays in hearing cases persist despite concerted efforts by the courts to prioritise incest cases. Sentencing guidelines are significantly needed, as often in recent incest cases sentences have been either inconsistent, lenient or inappropriate. Equally, the payment of compensation to victims is one aspect of sentencing that needs to be utilized more effectively by courts in Timor-Leste.

JSMP reiterates their call for the inclusion of an explicit crime of incest in the Penal Code which applies irrespective of the victim's consent or age. Criminalising incest will serve to better protect and prevent cases of incest in Timor-Leste as well as increase public awareness of the consequences for victims and subsequently decrease stigmatisation of victims by families and communities. An explicit crime of incest will protect against potential scenarios whereby a person greater than 14 years of age consents to incest without a full understanding of the impacts of incest on their own rights. This may be as a result of manipulative techniques employed by a perpetrator to convince the victim they are responsible for the crime; or due to a belief that speaking out will bring shame upon their family or place their siblings or other family members in greater harm. Further, it avoids problems where the evidentiary burden of 'lack of consent' cannot be proven because the victim refuses to either give evidence or gives misleading evidence.

There is a need for the Timor-Leste government and court actors to improve compliance with international human rights law and thereby fulfil their obligations under treaties. In addition, a victim-centred approach must be implemented in all incest cases. Through implementing such an approach, the focus is placed equally on assisting and protecting victims of incest, investigating and prosecuting the crime, and preventing future incest crimes.

JSMP believes the following recommendations will ensure greater protection of victims and reduction in incidences of incest.

1. JSMP recommends that prosecutors and judges utilise protective and coercive measures in cases of incest. In particular, the choice of measure should be determined on a case-by-case basis, with focus placed on the safety of victims and their families along with the prevention of defendants engaging in additional crimes.
2. JSMP recommends that the courts strengthen the system of case prioritisation for cases of incest or child sexual abuse as a means to continue reducing delays in the prosecution of perpetrators. To assist with this judges and prosecutors should receive specialised training on legal case management of incest and serious gender-based violence cases.
3. JSMP recommends enhancing the capacity of court actors to charge and sentence perpetrators of sexual crimes consistently and appropriately, in accordance with the severity of the crime and relevant Articles of the Penal Code. To assist with this:
 - a. Sentencing guidelines should be developed to ensure consistency in sentencing outcomes. The guidelines should clearly outline general sentencing principles in cases of incest along with guidance on the joinder of crimes.
4. JSMP recommends that the court award civil compensation in more cases of incest. To assist with this:
 - a. Prosecutors and judges should receive training on how to determine the appropriate amount of compensation in cases of incest.
 - b. The courts should develop sentencing guides on cases of incest which provide guidance to judges on calculating civil compensation for victims.
5. JSMP recommends the inclusion of a new article in the Penal Code after Article 172. This article should criminalise both incestuous intercourse and other sexual acts, cover the uncle-niece relationship, have a penalty commensurate with that for aggravated sexual assault of a minor, and clarify that the crime applies only to the person who is exploiting the family relationship to ensure that only the perpetrator is prosecuted.
6. JSMP recommends amending Article 177 of the Penal Code so to increase the age of consent to 17 years of age. Additionally, a defence to the crime of sexual abuse of a minor should be included in Article 177 where sexual relations are consensual, the victim is 16 years of age and the offender is close in age to the victim, or the parties are legally married. JSMP also recommends the removal of Article 178 from the Penal Code due to the fact that the amended Article 177 will cover acts previously covered by Article 178.
7. JSMP recommends the development of child justice related legislation and the formalisation of the child protection system.
8. JSMP recommends that court actors ensure international human rights laws are complied with and undertake a broader human rights approach in crimes of incest.
9. JSMP recommends that a victim-centred approach is implemented in cases of incest. To assist with this:
 - a. Court actors and psychosocial service providers should work collaboratively to provide services to victims of incest.
 - b. Community awareness of the crime of incest should be increased through such activities as legal education training and sensitivity campaigns.

INTRODUCTION

Gender-based violence remains prevalent in Timor-Leste. From January 2012 until May 2018 JSMP monitored and analysed 2899 cases involving gender-based violence against women and girls, which accounted for 58 per cent of the 4997 criminal cases monitored by JSMP.

Widely recognised as a violation of human rights and a form of discrimination, gender-based violence seriously affects the ability of women and children to enjoy their human rights. In Timor-Leste women and children are disproportionately subject to gender-based violence, including domestic and sexual violence.

In recent years positive progress has been made to address the significantly high level of gender-based violence in Timor-Leste. The National Parliament approved the National Action Plan on Gender-Based Violence for 2015 to 2019 and promulgated certain laws which contribute to bringing about gender equality in Timor-Leste. While, the consideration and application of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW) by court actors in cases of gender-based violence has increased. The courts have also set about processing a large proportion of pending gender-based violence cases and are seeking to ensure that new cases of gender-based violence are processed in a timely manner.

However, significant work still needs to be done in order to reduce gender-based violence and eliminate all aspects of discrimination against women and children. Inadequate implementation of laws, normative gaps in laws and policies, and a failure by court actors to adopt practices which protect victims' rights are just some of the issues needing to be addressed. Indeed, the Committee on the Elimination of Discrimination against Women¹ and the Committee against Torture² have both expressed concern about gender-based violence being widespread in Timor-Leste, as well as the very low reporting and conviction rates for gender-based violence crimes. A further area of concern for the Committees was fact that there is limited medical, psychological and legal assistance available for gender-based violence victims.

JSMP believes that these issues are exceedingly apparent in cases of incest, which is a particular heinous form of gender-based violence. A widespread problem in Timor-Leste, acts of incest are particularly sinister as the perpetrator takes advantage of the relationship of dependence and the victim's trust of the perpetrator is violated.

JSMP monitored 49 cases of incest from January 2012 until May 2018. However, this number only partially reflects the extensiveness of incest in Timor-Leste. Cases of incest are often not reported due to the victim facing such obstacles as coercion and threats from the perpetrator or their family, stigmatisation by their family and community, and a lack of information about the formal justice system.

Incest is defined as any sexual act that takes place between an offender and their child or parent, grandchild or grandparent, brother or sister, half brother or sister, or step or legally adopted relation of a similar kind. JSMP recognises that sexual relations between other familial relations, such as aunts and uncles with nieces or nephews or an unrelated child to whom the offender is like a parent or between cousins, also takes place and so believes sexual acts between these familial relations should be included in the definition of incest.

¹ UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations on the second and third periodic reports of Timor-Leste*, 20 November 2015, CEDAW/C/TLS/CO/2-3, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTLS%2fCO%2f2-3&Lang=en.

² UN Committee against Torture (CAT), *Concluding observations on the initial report of Timor-Leste*, 15 December 2017, CAT/C/TLS/CO/1, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTLS%2fCO%2f1&Lang=en.

In JSMP's 2012 report *Incest in Timor-Leste: An Unrecognised Crime* it was recognised that the protection given in the Penal Code to victims of incest was weak.³ JSMP also analysed and reported upon the serious limitations concerning the implementation of existing laws in Timor-Leste and associated mechanisms for the protection of victims. Identified in the report were a number of ways in which the legislative framework and child protection structures could be strengthened so to ensure the protection of victims and reduce the incidences of incest.

Six years on and minimal progress has been made in addressing the prevalence of incest in Timor-Leste. JSMP continues to strongly advocate for the creation a specific crime of incest in the Penal Code, along with strengthened implementation of existing laws and associate mechanisms to protect victims of incest.⁴ However, an act of incest remains only punishable where the victim is less than 14 years of age, or it can be proven that force was used by the perpetrator and the act was non-consensual. Similarly, JSMP continue to observe court actors and the State not providing adequate protection and support to incest victims.

This report has been prompted by the ongoing need to comprehensively address the crime of incest in Timor-Leste and the protective offered to victims. The report will provide an updated analysis of incest cases in Timor-Leste, specify the ways in which victims of incest can be better protected at all stages of the court proceedings and the means by which to deter potential perpetrators of incest.

The first section of the report considers incest in Timor-Leste since the publication of the 2012 report, based on JSMP's court monitoring and case studies. The second section examines the ways in which victims of incest are not currently protected during pre-trial, trial and sentencing. The third section respectively outlines the importance of strengthening the legislative framework and taking a human rights and victim-centred approach in cases of incest. The final section of the report contains a list of JSMP's recommendations to ensure the protection of victims and reducing cases of incest.

³ JSMP, *Incest in Timor-Leste: An Unrecognised Crime* (August 2012), available at: <http://jsmp.tl/wp-content/uploads/2012/05/Incest-in-Timor-Leste-August-2012.pdf>.

⁴ JSMP and ALFeLa, *Improving the Penal Code to better protect women and children: Submission to the National Parliament of Timor-Leste* (January 2015), available at: <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLa-Penal-Code-submission-FINAL-English.pdf>. JSMP, PRADET & ALFeLa, *Shadow Report from NGOs: Timor-Leste Government's progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (June 2015), available at: http://jsmp.tl/wp-content/uploads/2013/03/INT_CEDAW_NGO_TLS_20974_E.pdf. Timor-Leste Civil Society Coalition on CAT, *Timor-Leste's Initial Report to the Committee Against Torture: Joint civil society submission on behalf of the Timor-Leste NGO Coalition on CAT* (October 2017), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fTLS%2f29139&Lang=en.

1 INCEST IN TIMOR-LESTE

1.1 JSMP's Court Monitoring Statistics

JSMP monitored 49 incest cases from January 2012 to May 2018 in the four District Courts located in Dili, Baucau, Suai and Oecusse. This number only represents a small number of the cases of incest in Timor-Leste as many cases go unreported. Non-reporting is often a result of lack of access to the formal justice system, combined with social and family pressure on victims to deal with the matter outside of the formal justice system.

JSMP observed that in 22 per cent of incest cases the crime committed was aggravated rape characterised as domestic violence. While in 8 (16%) cases the crime committed was aggravated rape and in 7 (14%) cases the crime committed was sexual abuse of a minor with penetration.

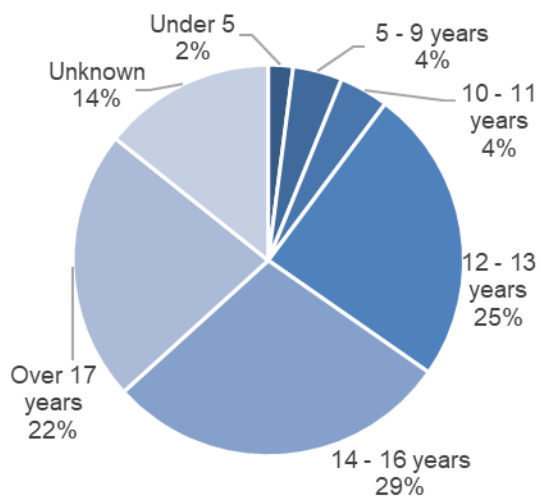
In 29 per cent of incest cases the victim was aged 14 to 16 years, while 24 per cent of victims were aged 12 to 13 years and 22 per cent of victims were aged 17 or older. JSMP's data revealed that in all 49 cases monitored by JSMP the perpetrator was male, and in 53 per cent of these cases the perpetrator was aged 41 or older. In the majority of cases the perpetrator was the victim's father (43%). In 22 per cent of cases the perpetrator was the victim's adopted father and in 20 per cent of cases the perpetrator was the victim's uncle.

Table 1: Cases of incest monitored by JSMP

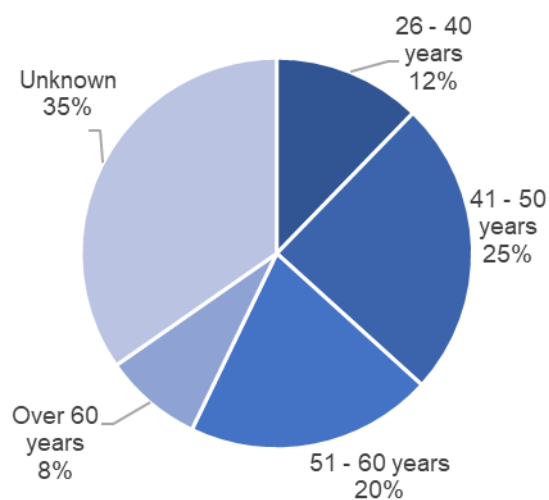
Case type	Article(s)	Number of cases
Aggravated rape characterised as domestic violence	Articles 172 & 173 PC & Article 35 LADV	11
Aggravated rape	Articles 172 & 173 PC	8
Sexual abuse of a minor with penetration	Article 177(1) PC	7
Aggravated sexual abuse of a minor with penetration characterised as domestic violence	Articles 177(1) & 182 PC & Article 35 LADV	4
Aggravated sexual abuse of a minor with penetration	Articles 177(1) & 182 PC	3
Continuous sexual abuse of a minor with penetration characterised as domestic violence	Articles 41 & 177(1) PC & Article 35 LADV	2
Aggravated rape	Articles 172 & 173 PC & Article 285 KUHP	2
Sexual coercion characterised as domestic violence	Article 171 PC & Article 35 LADV	1
Sexual coercion and aggravated rape characterised as domestic violence	Articles 171, 172 & 173 PC & Article 35 LADV	1
Attempted sexual abuse of a minor with penetration	Articles 23 & 177(1) PC	1
Termination of pregnancy and aggravated rape	Articles 141, 172 & 173 PC	1
Sexual acts with an adolescent	Article 178 PC	1
Attempted aggravated rape	Articles 23, 172 & 173 PC	1
Continuous aggravated rape	Articles 41, 172 & 173 PC	1
Sexual abuse of a minor with penetration characterised as domestic violence	Articles 177(1) PC & Article 35 LADV	1
Rape	Article 172 PC	1
Sexual abuse of a minor with other sexual act characterised as domestic violence	Article 177(2) PC & Article 35 LADV	1

Case type	Article(s)	Number of cases
Sexual abuse of a minor with other sexual act and simple offences against physical integrity characterised as domestic violence	Articles 177(2) & 145 PC & Article 35 LADV	1
Rape, termination of pregnancy & simple offences against physical integrity	Articles 141, 145 & 172 PC	1
Total cases of incest		49

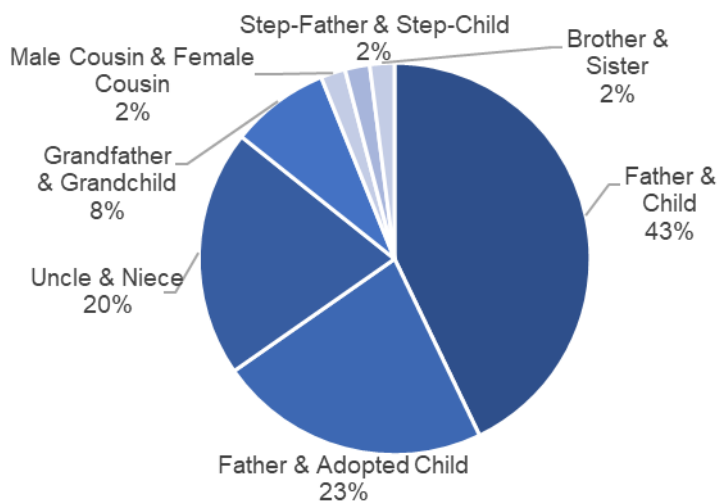
Graph 1: Cases of incest by age of victim



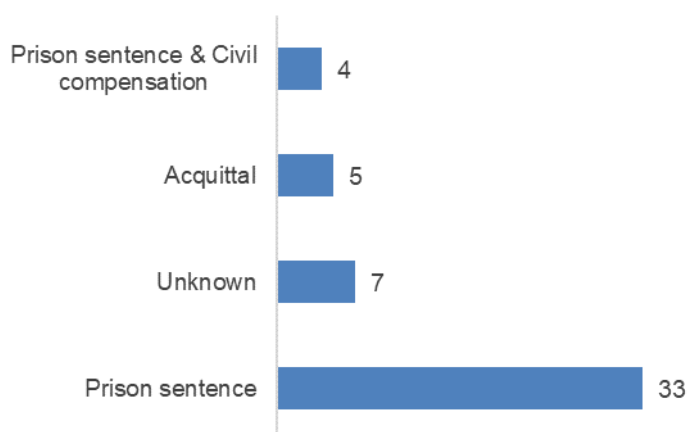
Graph 2: Cases of incest by age of defendant



Graph 3: Cases of incest by the relationship between victim and defendant



Graph 4: Sentencing trends in incest cases



JSMP's monitoring identified that the courts have made significant progress in ensuring sentences for perpetrators of incest reflect the severity of the crime committed. This progress is evident by the fact that in 67 per cent of cases, the perpetrator received a prison sentence. In four cases the perpetrator was sentenced to prison for 28 years.

However, JSMP is concerned that in several cases the sentence received by the perpetrator does not reflect the gravity and circumstances of the case. Thus, JSMP believes work still needs to be done by the justice sector to ensure that the courts when sentencing perpetrators are complying with their obligations under national and international laws to protect children.

In 7 cases JSMP was unable to determine the outcome of the trial as the court closed proceedings to the public. While in 5 cases the perpetrator was acquitted due to insufficient evidence.

1.2 Case Studies ⁵

Case Study 1: Father and daughter

Binoi was 14 years old and lived with her parents and siblings in a remote part of the Dili municipality. One night in 2015, Binoi saw her father, Ambere, having sexual relations with Binoi's older sister, Domingas. Binoi was scared and so did not tell anyone what she saw.

Some months later in 2015, Binoi was home alone when Ambere entered Binoi's bedroom and told her to get on the bed. Binoi refused and so Ambere grabbed Binoi's by the neck and said he would strangle her if she didn't do what he said. Having forced her onto the bed, Ambere took out his penis and raped Binoi. This was repeated six times in the following months. Ambere threatened to kill Binoi's older sister and mother if Binoi told anyone.

In February 2016, Binoi visited her Grandparent's house and told them what Ambere had been doing to her. The next day, Binoi's uncle and Grandparents took Binoi to the police to report what had happened to her and her older sister, Domingas. Initially, Domingas denied Ambere had raped her. However, four months later Domingas, convinced by Binoi, told police that Ambere had raped her many times and as a result she had become pregnant.

The police arrested Ambere and detained him for a short while before releasing him. Upon his release, Ambere was allowed to return to his home where he lived with Binoi's mother and siblings. No legal measures were put in place by the court to prevent to Ambere from having contact with other children.

⁵ All personal details in the case studies have been changed to protect confidentiality.

Binoi lived with her Grandparents until the trial was held. During this time Ambere telephoned Binoi and threatened that he would kill Binoi's mother and sister if she spoke about what he had done to her. As a result, Binoi never felt safe and was continually afraid to leave her Grandparent's house, even to go to school.

The prosecutor charged Ambere with aggravated rape in accordance with Articles 172 and 173(a) of the Penal Code.

At trial, Binoi was required to sit in the court room with Ambere sitting nearby. Though, Ambere was required to sit outside of the court room when Binoi gave evidence, Binoi remembered his previous threats and so she only stated basic facts to the Court. But Binoi did tell the court that she was afraid of Ambere and what he may do to her. As a result, the Court imposed the protective measure that Binoi was to reside in safe house in Dili for the length of the trial.

In late 2016 the Court found Ambere guilty of aggravated rape and sentenced him to 30 years in jail.

This case clearly shows the need for pre-trial coercive measures to be applied. Binoi was forced to live with her Grandparents and then in a safe house while Ambere was free to live in his own home, with no measures in place to prevent him from reoffending during this time. Further, Ambere was able to repeat his threatening behaviour towards the Binoi as there was no prohibition on him not contacting the victim. Given it was reasonably foreseeable that Ambere would repeat his acts of aggression and this endanger the Binoi's psychological and physical well-being, coercive measures on Ambere should have been implemented.

Case Study 2: Father and daughter

Insoi was an 18-year-old student who lived with her parents in the municipality of Liquica.

One day in 2005, Insoi's father, Mautersa, entered her bedroom. Threatening Insoi with a machete, he told her he wanted to have sex with her and that if she refused he would kill her. Insoi stayed silent while he raped her.

Mautersa continued to have sex with his daughter over the following months. As a result, Insoi became pregnant to Mautersa. In 2006 when Insoi gave birth, Mautersa threatened her. Insoi was told by Mautersa she was to not tell anyone what he had done to her and was to say that the child was another man's.

In 2009, when Insoi's child was 4 years old, Mautersa started raping Insoi again. Insoi was raped many times and as a result, Insoi fell pregnant again with a second child to her father.

In June 2010, Mautersa was attempting to rape Insoi when her older brother caught them. Insoi's brother took her to the police to report what had happened. The police arrested Mautersa but later released him and he was allowed to return home. No legal measures were put in place to prevent Mautersa from residing in the house with Insoi's siblings and children.

Insoi lived in a safe house until 2011 when she decided that she and her children would return to stay with her family, including Mautersa.

Insoi had to press the prosecutor to pursue the case. Shortly after reporting the case, Insoi was informed by the prosecutor that there was insufficient evidence and so they would be archiving the case. Insoi was determined to bring the case to trial, and so Insoi and her family demanded that the prosecutor reopen the case. The case was reopened, and the prosecutor began an investigation.

In 2015, the prosecutors charged Mautersa with aggravated rape characterised as domestic violence in accordance with Articles 172 and 173(a) of the Penal Code along with Article 35 of the Law Against Domestic Violence.

The Dili District Court heard this case in 2017. During the hearing, the court learnt that Insoi was residing at home with her family, including Mautersa. Therefore, the judge altered the restrictive

measure placed on the defendant in regard to proof of identity and residence to pre-trial detention. Thereby, allowing Insoi to reside safely with her children, mother and siblings in the family home.

At trial, Mautersa confessed all the facts. He admitted to having sexual intercourse with the victim eight times, and not three times as he was charged with. The judge amended the charge to aggravated rape characterised as domestic violence and attempted rape.

In July 2017, the court found Mautersa guilty of seven acts of rape and one act of attempted rape. He was sentenced to 28 years in prison.

This case demonstrates that delays in trial hearings in sexual abuse cases are problematic. The fact that the case took seven years to resolve shows the need for the clear prioritisation of sexual abuse cases at all stages of the criminal process. Also, this case shows the need for improving gender sensitivity amongst court actors along with their understanding of cases of incest. There was clear evidence of a serious sexual crime being committed by Mautersa against Insoi on several occasions. Yet, the prosecutor who first handled the matter deemed there was insufficient evidence and archived the case. While the case was eventually reopened and pursued, the first prosecutor's decision resulted in an unnecessary delay and illustrates the need for an explicit crime of incest.

Case Study 3: Father and daughter

Rusu was a 13-year-old student who lived with her family in the municipality of Baucau.

In January 2013, Rusu's father, Beremali entered her bedroom while she was sleeping and pinned her to the bed. Rusu tried to scream but Beremali threatened to kill her if she did. Rusu was scared and so she stayed still while her father raped her. This was repeated many times over the following weeks.

In late March 2013, Rusu told her grandparents, cousin and uncle what Beremali was doing to her. They went immediately and informed the police. Beremali was arrested but released shortly afterwards having been advised that he was required to provide proof of his identity and residence in accordance with Article 186 of the Criminal Procedure Code. He returned home and resumed living with his family. While, Rusu was placed in a safe house within Baucau municipality. Because she was living near Beremali, Rusu was incredibly frightened and would rarely leave the safe house.

During the trial proceedings the judge ordered for Rusu to be moved to a safe house in Dili. The judge also revoked the conditions regarding Beremali's residency and in place imposed pre-trial detention on Beremali.

At the trial, Beremali denied the charges against him. He told the court that between January and April 2013 he was away at the family's rice paddies and as he had not returned to the family's house during this time it was not possible he raped Rusu.

In December 2017, Beremali was found guilty of aggravated sexual abuse of a minor with penetration characterised as domestic violence in accordance with Articles 177(1) and 182(1)(d) of the Penal Code along with Article 35 of the Law Against Domestic Violence. He was sentenced to 22 years in prison.

This case shows the problems when the courts do not apply pre-trial coercive measures. Rusu was forced to live for four and a half years in a safe house while Beremali was free to live in his home, with no measures in place to prevent him reoffending during this time.

2 AREAS OF CONCERN IN PRE-TRIAL AND TRIAL PROCEEDINGS

2.1 Use of protective or coercive measures

In cases of incest priority must be placed on protecting victims prior to and during the trial period as well as preventing perpetrators from committing further crimes. Protective and coercive measures provide the means through which judges can do this. However, as illustrated in the above case studies, court actors continue to not make proper use of these measures.

The protective and coercive measures available to judges are contained within Articles 186 to 203 of the Criminal Procedure Code, Articles 37 and 39 of the Law Against Domestic Violence, and Chapters II to IV of the Law on Protection of Witnesses.⁶ One or several of these measures may be imposed by a judge on a defendant either during the investigation stage, at the request of the prosecutor, or at any other procedural phase of the trial. However, a judge may only impose a measure when there is a reasonable fear that the defendant may either flee, pursue the criminal activity or disrupt public order and peace.⁷

The range of measures contained in the Criminal Procedure Code are broad in nature. An obligation to periodically appear before a judicial authority or police entity, the granting of bail, a prohibition on travel and pre-trial detention are all different measures the judge may impose on a defendant.⁸

The seriousness of the crime of incest warrants, in JSMP's view, the imposition of pre-trial detention on defendants. In the above case studies, the victims were required to either remain in the family home and live with the defendant or go and stay in a safe house while the defendant remained in the family home. JSMP commends the judges in Case Studies 2 and 3 for protecting the victims by imposing pre-trial detention on the defendants. However, JSMP is concerned that in both Case Studies the defendants were able to live at home from when the investigation into the allegations commenced until the matter was heard several years later. JSMP regards that in all cases of incest the prosecutor should at the commencement of the inquiry request the judge impose pre-trial detention on the defendant. Imposing such a measure will ensure that a victim is neither required to stay in a safe house nor cohabit in the family home with the defendant. But rather they can reside safely and securely in the family home without fear of the defendant.

Another measure most relevant in cases of incest is contained in Article 37 of the LADV. This measure allows a judge, in the case of a crime of domestic violence, to remove the defendant from their family residence as well as prohibit the defendant from contacting the victim. Notably, this measure can only be imposed when the judge reasonably foresees, from the act of violence perpetrated, that the defendant may repeat their acts of aggression in a manner that will endanger the victim's life or physical, psychological or sexual integrity.

Case Study 1 is illustrative of the necessity for the measure within Article 37 to be imposed in cases of incest. The fact that Ambere could contact Binoi and continue to threaten her demonstrates the need for such a measure to be automatically imposed in cases of incest. It is unclear why the courts have not made greater use of this measure as the likelihood a perpetrator of incest will continue to threaten their victim during trial proceedings is significantly high. The circumstances of Case Study 1

⁶ Democratic Republic of Timor-Leste, *Criminal Procedure Code*, Decree Law No. 13/2005 of 22 November 2005, Articles 186–203; Democratic Republic of Timor-Leste, *Law Against Domestic Violence*, Law No. 7/2010 of 7 July 2010, Articles 37 and 39; Democratic Republic of Timor-Leste, *Protection of Witnesses*, Law No. 2/2009 of 6 May 2009, Chapters II–IV.

⁷ Democratic Republic of Timor-Leste, *Criminal Procedure Code*, Decree-Law No. 13/2005 of 22 November 2005, Article 183.

⁸⁸ Democratic Republic of Timor-Leste, *Criminal Procedure Code*, Decree-Law No. 13/2005 of 22 November 2005, Article 186 – 203.

demonstrate that where a judge does not impose such measures it will inevitably result in weakened evidence as victims change their version of events under pressure from the defendant. Undoubtedly, the ongoing threats and pressure from Ambere caused Binoi to reluctantly give but the basic facts to the court as she remained fearful for her life and that of her family. JSMP commends the court for their action in ensuring Binoi's safety by placing her in a safe house. Though, JSMP deems that more appropriate measures should have been imposed, namely pre-trial detention of the defendant and a prohibition on contact by the defendant with the victim. The imposition of these two measures would have gone some way to ensuring that Binoi was able to reside at home and be appropriately protected.

JSMP urges prosecutors and judges to increase their consideration and application of protective and coercive measures in cases of incest. The choice of measures should be determined on a case-by-case basis, with focus placed on the safety of victims and their families along with the prevention of defendants engaging in additional crimes.

2.2 Delays with trials

In recent years the courts have concentrated on hearing cases which have been pending for a long time and processing all new cases in a timely manner. JSMP considers such efforts by the courts to be a positive step, as it remains essential incest cases and other serious gender-based violence crimes are prioritised and heard without delay.⁹ The short timeframe from the commencement of court proceedings in Case Study 1 to when the proceedings were concluded demonstrates the benefit of a prioritisation system.

Promptly hearing cases of incest and other serious gender-based violence cases not only recognises the gravity of such crimes but also prevents defendants from committing further violence during the pre-trial period. In addition, a strong message is sent that incest and gender-based violence will not be tolerated by the State and faith that the formal justice system can deliver justice in a timely manner is increased.

However, in many cases there continues to be lengthy delays from the commencement of court proceedings to when those proceedings are concluded. In Case Study 3 approximately four and a half years passed between the crime being reported and the judge handing down their decision. While, in Case Study 2 there was approximately seven years from when the crime was reported to police until the court trial took place and the judge handed down judgment. In this case the delay was compounded by the prosecutor's initial decision to archive the case due to them believing there was insufficient evidence. JSMP is deeply concerned by the prosecutor's decision to archive the case. The victim was both courageous and strong by reporting the serious crime that had been perpetrated against her by her father. In such circumstances, JSMP believes that the prosecutor should immediately bring the case before the court to examine the evidence and determine if criminal justice is to be administered. Further, the case reported to the prosecutor involved a public crime which can be prosecuted without the filing of a complaint by the victim. In Case Study 2 because the prosecutor archived the case, the victim was required to advocate and convince the prosecutor to reopen the case. Subsequently, the prosecutor determined they had strong evidence and proceeded with charging the defendant. JSMP observed similar lengthy lapses between the commencement and conclusion of court proceedings in the other incest cases monitored.

When delays result in cases being heard after long time lapses then a number of problems can arise. A loss of evidence along with changes in victims or witnesses' evidence are two such problems. Delays make the entire process both arduous and emotionally challenging for victims, who generally want to move on with their lives and not have the trauma they suffered prolonged. Thus, it is not unusual if victims choose to not report the crimes committed against them or, having reported the

⁹ Serious gender-based violence includes domestic violence, rape, sexual exploitation, sexual exhibition, sexual abuse of minor, sexual abuse with an adolescent and human trafficking.

crime, they may just disengage from the formal justice system. Alternatively, because victims of incest are generally economically dependent on the perpetrator, any form of delay, may lead to the victim choosing to resolve the crime through local justice mechanisms, as this allows them to reconcile with the perpetrator and their family as well as remain at home. Case Study 2 demonstrates the influence of the victim's economic circumstances in court proceedings. In this case, Insoi with her two children was left with no alternative but to return home during the proceedings and reside at home with the defendant and her family. Certainly, Insoi suffered sustained emotional trauma by being in such close to proximate with the perpetrator while waiting for the court to hear her case.

JSMP regards it as crucial for the courts to continue reducing time frames in cases of incest and other serious gender-based violence cases. In order to strengthen the courts efforts to reduce delays in the prosecution of incest cases, greater resources need to be allocated to the courts and public prosecutors. Further, specialised training on legal case management of incest and serious gender-based violence cases should be given to judges and prosecutors. Enhancing case management of cases will contribute to the effective processing of incest cases in a timely manner.

2.3 Sentencing in cases of incest

Significant progress has been made by the courts in ensuring sentences for perpetrators of incest reflect the severity of the crime committed and recognises the suffering endured by the victim. JSMP identified that in 11 of the 37 cases where prison sentences were handed down, the length of imprisonment was 20 or more years. However, sentencing in cases of incest can often be inconsistent and not commensurate with the crime committed, and lengths of prison sentences can vastly different even in cases with similar facts.

When the court hands down a lenient or inappropriate sentence then they are disregarding the serious nature of the crime of incest and the psychological and emotional harm suffered by the victim as well as the physical injuries they will have sustained. Further, public confidence in the justice system is damaged and future victims will be deterred from reporting the crime perpetrated against them.

In several incest cases JSMP has observed prosecutors and judges failing to make use of Article 35 of the Penal Code which allows for the joinder of crimes. The number of crimes is defined in Article 35(1) as either 'the number of legally defined types of actually committed crimes, or by the number of times that the same type of has been committed through the conduct of the perpetrator.' When perpetrators who have committed multiple incidences of incest are charged and sentenced as if they have committed only one incidence, then the sentence handed down does not account for each individual incidence of incest.

JSMP has also observed on occasion cases where prosecutors and judges do make use of Article 35 but the sentence for each incidence falls below the minimum sentence for the crime committed. This can be seen in Case Study 2 where the perpetrator was found guilty of one act of attempted rape and seven acts of rape against the victim. Accordingly, the court sentenced the defendant to 3 years and 6 months in prison for each of the crimes committed. For all the crimes committed the court accumulated the individual penalties and sentenced the defendant to 28 years in prison, which is close to the maximum accumulated penalty, pursuant to Article 36. JSMP commends the court on considering each crime separately. However, JSMP is concerned that the length of each individual sentence for the seven acts of rape are not in accordance with the minimum sentence for the relevant article. JSMP urges the court to remember that the crime of rape carries a penalty of 5 to 15 years in prison, which is increased to between 5 and 20 years in prison if there are aggravating circumstances. While for an act of attempted rape carries a penalty of 1 to 10 years, which is increased to between 1 and 13 years and 4 months if there are aggravating circumstances. In this case a penalty of 3 years and 6 months for each act of rape committed by the defendant is not appropriate.

Given the above issues with sentencing, JSMP recommends a sentencing guide which clearly explains the sentencing process in incest cases, could assist the court to hand down consistent and

appropriate sentences. While maintaining the discretion of judges to determine the appropriate penalty on a case-by-case basis, a sentencing guide can help reduce inconsistent, lenient and inappropriate sentences.

2.4 Failure to award civil compensation

JSMP has observed that it remains uncommon for civil compensation to be ordered in cases of incest. Only 4 cases of incest have involved civil compensation in the period January 2012 to May 2018. JSMP commends judges for starting to award compensation but are concerned that is not common practice for the prosecutor to request civil compensation be awarded in cases of incest nor for judges to award compensation.

The objective of civil compensation is to repair the harm caused to the victim, and to correct the behaviour of the perpetrator. Compensation can help to address a victim's economic dependency on a perpetrator as well as provide an immediate remedy for the victim. It is also a means through which the court can redress the victim for the harm and damage inflicted by the perpetrator and deter the perpetrator from committing future crimes.

Requiring perpetrators of incest to pay compensation to victims is one aspect of sentencing that needs to be utilized more effectively by courts in Timor-Leste. Even the smallest amount of compensation can provide a victim with financial autonomy and can cover any financial costs associated with the violence, including medical costs and redress for emotional and psychological harm suffered. Thus, JSMP believes that prosecutors should request, and judges award, civil compensation in all incest cases.

However, civil compensation should not replace criminal penalties such as prison sentences. Instead judges should impose compensation in conjunction with a prison sentence reflective of the crime committed. The judge imposing compensation in conjunction with an appropriate prison sentence is an effective way of ensuring perpetrators feel the impact of the penalty and that victims feel they are receiving justice.

JSMP recommends that prosecutors and judges receive training on how to determine the appropriate amount of compensation in cases of incest. Sentencing guides for incest cases should also be developed which can provide guidance to judges on calculating civil compensation for victims.

3 PROPOSALS FOR CHANGE

3.1 Amendments to the Penal Code

Creation of a crime of incest

Victims of incest, particularly those above the age of 14 years, are not afforded adequate protection. Existing provisions in the Penal Code, which allow for the prosecution of acts of incest as sexual abuse of a minor or rape, are inadequate.¹⁰ The current laws only make an act of incest punishable where the victim is less than 14 years of age, or it can be proven that actual force or serious threats were used.

JSMP in the 2012 report *Incest in Timor-Leste: An Unrecognised Crime* called for the creation of a new article in the Penal Code which explicitly recognised incest as a crime regardless of the victim's consent or age. The proposed amendment to the Penal Code is a more effective way of preventing and protecting against incest. The creation of a crime of incest, which applies irrespective of consent, age and whether or not violence or serious threats are used, allows for enhanced protection of victims of incest.

¹⁰ Democratic Republic of Timor-Leste, *Penal Code*, Decree-Law No. 19/2009 of 8 April 2009, Articles 172 and 177.

In mid-2014, the National Parliament requested JSMP and ALFeLa provide commentary on the Parliament's proposal to amend Article 172 (Rape) of the Penal Code to include a subsection on the crime of incest. JSMP together with ALFeLa analysed the proposed amendments and submitted to the National Parliament in January 2015, *Improving the Penal Code to better protect women and children: A submission to the Timor-Leste National Parliament*.¹¹ In this submission, JSMP and ALFeLa recommended the inclusion of a new article in the Penal Code which would criminalise incestuous intercourse and other sexual acts, cover uncle and niece relationships, have a penalty commensurate with that for aggravated sexual assault of a minor, and clarify that the crime applies only to the person exploiting the family relationship to ensure that only the perpetrator is prosecuted.

Parliament are to be commended for reviewing the Penal Code and recognising the need for strengthening provisions so to better protect women and children. Nonetheless, in the three and half years since JSMP and ALFeLa submitted to the National Parliament recommendations to criminalise incest, no progress have been made. JSMP has noted to both the Committee Against Torture and the Committee on the Elimination of Discrimination against Women the lack of progress and apparent unwillingness by the government to implement a specific crime of incest.¹² In the *Concluding observations on the initial report on Timor-Leste*, the Committee Against Torture recommended that the government should define and introduce incest and marital rape as specific crimes in the Penal Code, along with appropriate sanctions.¹³

JSMP calls on the National Parliament to re-examine the recommendations made in the 2015 submission, comply with the recommendations by the Committee against Torture and Committee on the Elimination of Discrimination against Women; and set about strengthening the Penal Code. Incest is an extreme violation of a victim's human rights and destroys the relationship of trust on which the family unit is built. Further, the State has constitutional and international obligations to properly protect women and children from all forms of gender-based violence, including incest. The incorporation into the Penal Code of a specific crime of incest is a significant way in which the State can comply with their obligations.

The creation of an explicit crime of incest can serve to increase recognition of the crime and mobilize action to strengthen prevention actions. Criminalising incest may lead to greater public awareness of the consequences for victims and subsequently decrease stigmatisation of victims by families and communities. Further, an explicit crime of incest is appropriate in Timor-Leste because of the significant power imbalances between men and women that exist, and the limited public awareness concerning incest and its long-term effects.

Consent

Under the current provisions of the Timor-Leste Penal Code, the effective age of consent for sexual activities is 14 years of age. Article 177 of the Penal Code makes it a crime to sexually abuse a minor, nonetheless it applies only to sexual abuse committed against a minor under the age of 14 years.

¹¹ JSMP and ALFeLa, *Improving the Penal Code to better protect women and children: Submission to the National Parliament of Timor-Leste* (January 2015), available at: <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLa-Penal-Code-submission-FINAL-English.pdf>.

¹² JSMP, PRADET & ALFeLa, *Shadow Report from NGOs: Timor-Leste Government's progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (June 2015), available at: http://jsmp.tl/wp-content/uploads/2013/03/INT_CEDAW_NGO_TLS_20974_E.pdf. Timor-Leste Civil Society Coalition on CAT, *Timor-Leste's Initial Report to the Committee Against Torture: Joint civil society submission on behalf of the Timor-Leste NGO Coalition on CAT* (October 2017), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fTLS%2f29139&Lang=en.

¹³ UN Committee against Torture (CAT), *Concluding observations on the initial report of Timor-Leste*, 15 December 2017, CAT/C/TLS/CO/1, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTLS%2fCO%2f1&Lang=en.

Even though Article 178 does give a level of recognition to the vulnerability of minors aged 14 to 16 for sexual acts where the person takes advantage of the inexperience of the minor; this provision does seem to assume that consent to sexual acts can be given by minors aged 14 to 16.

The National Parliament has proposed to amend Article 177 of the Penal Code to raise the age of a person who can be a victim of sexual abuse of a minor from under 14 years to under 17 years. The subsequent effect of this would be to raise the age of consent in Timor-Leste to 17 years of age. Thereby, the definition of minor would be consistent with the age of majority under Article 118 of the Civil Code and the voting age as set by Article 18 of the Constitution.¹⁴ Further, it ensures that sexual crimes against all minors are recognised as serious offences.

In the 2015 submission to National Parliament, JSMP and ALFeLa expressed their support of amending Article 177 and raising the age of consent. JSMP regards it as important, that the legal framework in Timor-Leste provide sufficient protection for minors, particularly girls, in relation to sexual offences. This is especially crucial, as most child victims of sexual violence are adolescent girls, as evidenced by the fact that in all 49 cases of incest the victim was female.

Though, JSMP recognises that increasing the age of consent to 17 years may have unintended consequences. For instance, if two 16 years old had a consenting sexual relationship, they would both be guilty of a crime under Article 177. Therefore, JSMP believes it is important that at least for persons aged 16 years, there is a level of flexibility in the Penal Code to allow for consensual sexual relationships. Though, this must be balanced against the need to protect vulnerable young people from sexual exploitation. JSMP urges the National Parliament to increase the age of consent to 17 by amending Article 177. The proposed amendments to Article 177 should include a defence to the crime of sexual abuse of a minor where sexual relations are consensual, the 'victim' is 16 years of age and the 'offender' is close in age to the victim.

It is the view of JSMP that by increasing the age of consent to 17 years and the incorporation of a specific crime of incest in the Penal Code, victims of incest will be afforded greater protection as well as deter potential perpetrators. Further, the strengthening of Article 177 will ensure that relations which fall outside of the scope of a crime of incest (for example extended familial relations who cohabit with the victim or are in a position of familial dependence) who abuse their familial authority or exploit a relationship of dependency, are appropriately deterred and punished for their actions.

3.2 Compliance with international human rights law

Timor-Leste has obligations under international law, the Timor-Leste Constitution and national laws to provide effective protection to women and children against all forms of gender-based violence, including incest, as well as respect their integrity and dignity.

According to Article 9 of the Timor-Leste Constitution any international convention ratified by the State shall immediately become part of the Timorese legal system and prevail against any law that might contradict it.¹⁵ Thus, as a State Party to such human rights treaties as the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR), Timor-Leste is obliged to adopt and incorporate the principles from these into national legislation, policies and practices.¹⁶ The

¹⁴ Democratic Republic of Timor-Leste, *Civil Code*, Law No. 10/2011 of 14 September 2011, Article 118; Democratic Republic of Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*, approved and decreed on 22 March 2002, Article 18.

¹⁵ Democratic Republic of Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*, approved and decreed on 22 March 2002, Article 9.

¹⁶ Democratic Republic of Timor-Leste, *Ratification of the Convention on Rights of the Child*, Resolution of National Parliament No. 16/2003 of 16 April 2003; Democratic Republic of Timor-Leste, *Ratification of the Convention on the Elimination of Discrimination Against Women*, Resolution of National Parliament No. 11/2003 of 10 December 2002; Democratic Republic of Timor-Leste, *Ratification of the Covenant on Civil and Political Rights*, Resolution of National Parliament No. 3/2003 of 23 May 2003.

responsibility of the Timor-Leste government to protect and prevent women and children from incest is confirmed through these international treaties. More broadly, these treaties place a responsibility on Timor-Leste to ensure that women and children are protected from physical and mental violence and abuse as well as promote the recovery and reintegration of victims of abuse.

There has been considerable effort by the Timor-Leste government to address gender-based violence, including incest, and comply with the above obligations. Court actors, for instance, have begun to recognise the significance and impact of international human rights law in cases of gender-based violence. However, JSMP remains concerned that there remains insufficient consideration of international human rights law by judges and requests that greater emphasis is placed on compliance by the court in cases of incest.

It is imperative that not only in cases of incest are the legal instruments complied with but also that human rights principles are turned into effective policies and practices which contribute to the protection and prevention of incest. JSMP regards for Timor-Leste to comply with their international responsibilities then all areas and levels of government have a responsibility to apply human rights approaches. The development of a national action plan against incest is a step towards this. Another step is the establishment of an effective legal aid system which eliminates the economic barriers faced by victims of incest in gaining access to justice. JSMP has observed that many women and children do not have awareness of their legal rights and so will not report crimes perpetrated against them. An effective and efficient legal aid system, which provides legal advice and community legal education, would assist victims of justice to know their legal rights and gain access to justice.

The Timor-Leste government and court actors, including the courts and prosecution services, should consider ways to improve compliance with international laws. This could include the introduction of guidelines, training on international law relevant to incest and gender-based violence as well as a more active consideration by judges and prosecutors of the appropriateness of international law in each individual case and more broadly.

3.3 Victim-centred approach to cases of incest

Incest has a profound and far-reaching impact, with victims suffering long-lasting serious emotional and psychological harm in addition to physical injuries. Victims of incest often develop an inherent sense of mistrust, low self-esteem, depression, anxiety, self-loathing, self-destructive behaviour, learning difficulties and suicidal tendencies.¹⁷ Such psychological and emotional impacts are exacerbated by the fact incest is commonly associated with secrecy, betrayal, powerlessness, guilt, self-blame and fear of reprisal.¹⁸ Further, victims face increased risk of revictimisation, as they can associate the abuse they suffered as a distorted form of caring and affection. This can lead victims entering a series of abusive relationships.¹⁹

The intense impact of incest on victims can last a lifetime and span generations, with negative consequences on the victim's education, employment, and emotional wellbeing, as well as that of their family and community. Incest can also affect the social wellbeing of the victim as they can be stigmatized and ostracized by their families and communities.

In order to address the above impacts, along with preventing and protecting victims from incest, it is important a victim-centred approach is collaboratively carried out by state and non-state actors. In a

¹⁷ Judy Cashmore and Rita Shackel, 'The long-term effects of child sexual abuse' (CFCA Paper No. 11, Child Family Community Australia, 2013). John N. Briere and Diana M. Elliott, 'Immediate and long-term impacts of child sexual abuse' (1994) 4(2) *The Future of Children*, p. 54-69.

¹⁸ David M. Lawson, 'Understanding and treating survivors of incest' on *Counselling Today* (6 March 2018) <https://ct.counseling.org/2018/03/understanding-treating-survivors-incest/>

¹⁹ Judy Cashmore and Rita Shackel, 'The long-term effects of child sexual abuse' (CFCA Paper No. 11, Child Family Community Australia, 2013). John N. Briere and Diana M. Elliott, 'Immediate and long-term impacts of child sexual abuse' (1994) 4(2) *The Future of Children*, p. 54-69.

victim-centred approach, a victim's wishes, safety and well-being take priority in all matters and procedures. As illustrated in the above case studies, each victim was retraumatized throughout the legal proceedings as the focus was primarily taken off the victim's needs and concerns. The victims being required to reside either in a safe house or cohabit at home with their perpetrator, give evidence either with the perpetrator in the court room or nearby, and wait several years before their cases were heard, demonstrates the need for a victim-centred approach to be introduced in the investigation and prosecution of all incest cases.

Through implementing a victim-centred approach in incest cases the focus is placed equally on assisting and protecting victims of incest, investigating and prosecuting the crime, and preventing future incest crimes. A victim-centred approach seeks to minimize the victim suffering further trauma during the court proceedings by providing the victim with psychological, emotional and physical support in addition to legal support. This involves court actors positively working with service providers so that legal and psychosocial services can be provided to victims.

As part of a victim-centred approach, court actors and service providers need to also engage with communities so to raise awareness of the crime of incest and the extensive harm caused by incest. Engagement with communities could be through legal education training or sensitisation campaigns. Empowering communities' knowledge will assist with efforts to encourage reporting of incest, decrease stigmatisation of incest victims and increase collective prevention efforts.

4 CONCLUSION AND RECOMMENDATIONS

Incest is an atrocious form of gender-based violence, which is especially devastating because it violates the victim's trust of the perpetrator and takes advantage of the relationship of dependence. Victims suffer not only physical violence but also severe psychological and emotional harm. Negatively affecting the victim's relationship with their family, victims of incest will be stigmatised by their family and community.

Since JSMP launched their 2012 report on incest there has been significant improvements made by the justice sector in the handling of cases of incest. The court has ordered prison sentences in the majority of incest cases and have begun awarding civil compensation in a small number of cases to victims of incest. The National Parliament has sought to rectify deficiencies in the Penal Code with regard to incest by proposing to amend Article 172 to include a new subsection on the crime of incest.

However, considerable work still needs to be occur in order for victims of incest to receive superior protection and perpetrators are deterred from committing crimes. Such efforts as the inclusion of a separate crime of incest in the Penal Code, greater compliance with and recognition of international law in court judgments, and the implementation of a victim-centred approach in cases of incest, would all contribute to better protection and prevention in cases of incest. Therefore, JSMP urges the Government of Timor-Leste to ensure adequate resources are targeted towards protecting and preventing incest, and gender-based violence more broadly. In addition, the government needs to pursue a comprehensive legal and policy approach to bring about gender equality and changed social behaviour surrounding gender-based violence in Timor-Leste. Thru the government carrying out a holistic approach to ending gender-based violence then this enables greater empowerment of women and girls in Timor-Leste.

JSMP make the following recommendations to improve charging, trial proceedings and sentencing in cases of incest, and the treatment of victims during the trial process.

1. JSMP recommends that prosecutors and judges utilise protective and coercive measures in cases of incest. In particular, the choice of measure should be determined on a case-by-case basis, with focus placed on the safety of victims and their families along with the prevention of defendants engaging in additional crimes.

2. JSMP recommends that the courts strengthen the system of case prioritisation for cases of incest or child sexual abuse as a means to continue reducing delays in the prosecution of perpetrators. To assist with this judges and prosecutors should receive specialised training on legal case management of incest and serious gender-based violence cases.
3. JSMP recommends enhancing the capacity of court actors to charge and sentence perpetrators of sexual crimes consistently and appropriately, in accordance with the severity of the crime and relevant Articles of the Penal Code. To assist with this:
 - a. Sentencing guidelines should be developed to ensure consistency in sentencing outcomes. The guidelines should clearly outline general sentencing principles in cases of incest along with guidance on the joinder of crimes.
4. JSMP recommends that the court award civil compensation in more cases of incest. To assist with this:
 - a. Prosecutors and judges should receive training on how to determine the appropriate amount of compensation in cases of incest.
 - b. The courts should develop sentencing guides on cases of incest which provide guidance to judges on calculating civil compensation for victims.
5. JSMP recommends the inclusion of a new article in the Penal Code after Article 172. This article should criminalise both incestuous intercourse and other sexual acts, cover the uncle-niece relationship, have a penalty commensurate with that for aggravated sexual assault of a minor, and clarify that the crime applies only to the person who is exploiting the family relationship to ensure that only the perpetrator is prosecuted.
6. JSMP recommends amending Article 177 of the Penal Code so to increase the age of consent to 17 years of age. Additionally, a defence to the crime of sexual abuse of a minor should be included in Article 177 where sexual relations are consensual, the victim is 16 years of age and the offender is close in age to the victim, or the parties are legally married. JSMP also recommends the removal of Article 178 from the Penal Code due to the fact that the amended Article 177 will cover acts previously covered by Article 178.
7. JSMP recommends the development of child justice related legislation and the formalisation of the child protection system.
8. JSMP recommends that court actors ensure international human rights laws are complied with and undertake a broader human rights approach in crimes of incest.
9. JSMP recommends that a victim-centred approach is implemented in cases of incest. To assist with this:
 - a. Court actors and psychosocial service providers should work collaboratively to provide services to victims of incest.
 - b. Community awareness of the crime of incest should be increased through such activities as legal education training and sensitivity campaigns.